REMARKS

The present communication is responsive to the Official Action mailed July 20, 2010, rejecting all of the claims pending in the application ("Official Action"). In particular, the Examiner rejected claims 1-4, 6-16 and 18-24. Claims 1, 3-4, 6-9, 11, 13, 15-16, 18-20 and 23-24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,740,795 ("*Brydon*") in view of U.S. Patent No. 6,895,962 ("*Kullik*"). Claims 10, 12, and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Brydon* and *Kullik* as applied to claims 6, 11, or 18 above, and further in view of U.S. Patent No. 5,803,066 ("*Rapoport*"). Claims 2 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Brydon* and *Kullik* as applied to claims 1 or 18 above, and further in view of U.S. Patent No. 6,332,463 ("*Farrugia*").

Applicant respectfully disagrees with the rejections. For at least the reasons recited herein, Applicant requests that the Examiner reconsider. Applicant submits that the application is in condition for allowance.

Applicant also wishes to thank Examiners Colin Stuart and Patricia Bianco for participating with the undersigned in the interview on October 19, 2010, during which time the comments herein were discussed.

In the present rejection of claim 1 the Examiner has proposed a modification of embodiments of *Brydon* in combination with certain aspects of the device of *Kullik*. The Office Action states that "[Brydon] does not [] explicitly teach computing pressure setting based on detecting new inspiratory or expiratory cycles using only the speed signal. However, one of ordinary skill in the art at the time the invention was made would have found it obvious to use only the speed signal and would expect the Brydon's device to perform equally as well...")

(Office Action at 3.) With this modification, the Examiner concludes that Applicant's present technology is obvious. Applicant respectfully disagrees.

Applicant respectfully submits that a modification of the prior art is not appropriate if it renders the prior art being modified unsatisfactory for its intended purpose or otherwise inoperable. In such a case, there is no suggestion or motivation to make the proposed modification and it would not be considered obvious. *See In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). As discussed with Examiners Colin Stuart and Patricia Bianco during the interview held on Oct. 19, 2010, the presently proposed modification of the embodiments of Brydon described in the current Office Action would render Brydon inoperable. Applying the speed signal of the circuit of Fig. 1b as proposed without any motor current signal would result in a null or zero output from the multiplier 27, which would thereby produce a constant null "flow" signal. Such a signal would not be suitable for detecting respiratory cycles. Thus, Applicant respectfully submits that the claims are in condition for allowance.

For at least these reasons Applicant requests that the Examiner withdraw the rejection of the independent claims which may be compared to claim 1. Moreover, Applicant requests that the Examiner withdraw the rejections of the dependent claims which also contain novel and non-obvious subject matter.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,
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